

INTERNATIONAL PROTECTION IN THE EUROPEAN UNION

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ABSTRACT

Given that the European Union is facing a crisis in terms of migration, international protection has gained a fundamental role at the level of the European Union. Although the number of asylum seekers decreased at the beginning of 2017 compared to the previous year, the granting of protection remains a situation that is not manageable for the European Union.

Keywords: international protection, asylum seekers, human rights, European Union, migration.

The European Union is trying through its actions and policies to promote respect for human rights and equality between people and to combat any kind of discrimination. At international level, the application of the principle of equality implies, inter alia, the absence of a privileged status or the domination of one Member State over the others¹.

Europe is in the midst of a „crisis“ resulting from the conflicts in Iraq, Afghanistan and Syria, migration trials in North Africa due to economic insecurity, as well as generalized violence and human rights violations; and, to a lesser extent, the conflicts in Ukraine and Georgia.

A common asylum policy, including a Common European Asylum System, is a constituent element of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, under circumstances, legitimately seek protection in the Union. This policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States².

Despite the lower number of asylum seekers entering the European states, the pressure is obvious. Thus, in August 2017, 61 659 applications for international protection were registered in the EU + countries. Compared to the previous month, it was an increase of 9%, but a significant decrease (- 55%) compared to August 2016³.

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¹ See Raluca Miga Beșteliu, Catrinel Brumar, *International Protection of Human Rights*, 3rd Edition, The Universul Juridic Publishing House, Bucharest, 2007.

² See the Preamble to Directive 2013/32 / EU.

³ EUROPEAN ASYLUM SUPPORT OFFICE, *Latest Asylum Trends*, 2017, august, disponibil la <https://www.easo.europa.eu/information-analysis/analysis-and-statistics/latest-asylum-trends>.

It is also in the interest of both Member States and applicants to ensure a fair recognition of the need for international protection at first instance. For this purpose, applicants should be provided with legal and procedural information at first instance free of charge, taking into account their personal circumstances. The provision of such information should, inter alia, allow applicants to better understand the procedure, thus helping them to comply with the relevant obligations.

Member States may consider that it is the duty of the applicant to submit, as soon as possible, all the elements necessary to support his application for international protection. Member States are required to assess, in cooperation with the complainant, the relevant elements of the application.

Commitments regarding international cooperation and the principle of solidarity in the context of protection have been attested despite the difficulties encountered. We believe that it is inevitable to recognize these contributions to the protection of aliens, and it is also useful to support the strengthening of national capacity where necessary, especially since the protection measures of those who request it „always need time and material support⁴”.

Human rights protection mechanisms, through universal or regional international norms, establish the State's obligation to protect all categories of persons within its territory. The rights of persons claiming protection are „legal in nature, conferring protection⁵”. The International Court of Justice has determined that „human rights protection does not cease in the event of armed conflict, given the effect of the derogation provisions as set out in Article 4 of the International Covenant on Civil and Political Rights⁶”.

The right of a person to leave the state of origin is the expression of international law, governed by Article 12, paragraph 1 of the International Covenant on Civil and Political Rights as follows: „Everyone is free to leave any country, including his own country”.

Although the protection of individuals belongs to the state, there are situations in which „another state can take over the protection of citizens of another state⁷”. In these cases, the notion of legal protection has a special valency. Protection in this respect means legal protection⁸, the use of legal instruments, including international and national, which provide for the implementation of States' obligations and are

În anul 2016, țările UE au înregistrat un număr de 1.236.325 de cereri de azil. Cifra a fost în scădere cu 9% față de anul 2015, când numărul total al cererilor s-a ridicat la 1.4 milioane.

⁴ See Irina Moroianu Zlătescu, Application of anti-discrimination legislation to women, Works of the 10th International Conference on Non-Discrimination and Equal Opportunities, Nedes, 2016, Ed. Pro Universitaria, p. 24.

⁵ See Frederic Sudre, European and International Human Rights Law, Polirom Publishing House, Iasi, 2006, p. 46.

⁶ See International Court of Justice, *Legal Consequences of Building a Wall in the Occupied Palestinian Territory*, Consultative Opinion of 9 July 2004, para. 106.

⁷ See A. Năstase, C. Jura, F. Coman, *14 lectures on Public International Law*, Ed. C.H. Beck, Bucharest, 2012, p. 86.

⁸ See Irina Moroianu Zlătescu, *Human Rights-an Evolutionary System*, IRDO, Bucharest, 2008, p. 45.

intended to ensure that no person in need of protection is penalized or expelled, such as and that these persons are beneficiaries of the rights guaranteed. Protection is based on the law, serving the individual's need.

Qualifying for a situation of lack of state protection by the individual is the first step in determining the need for international protection. International protection includes the forms of granting refugee status or subsidiary protection status.

Although people leave the territories of their countries of origin following armed conflicts, it should not be understood that all aliens who come from such an area are potential refugees. It takes an act of persecution of that state directed directly to the individual to become a potential refugee. Persecution refers to serious human rights violations involving a threat to life or liberty, as well as other types of serious harm as assessed in the light of the applicant's opinions, feelings and psychology⁹. Because of this persecution, the return of the individual is impossible in the state whose protection he renounces. The persecution occurs when human rights or threats are systematic and governments or governments fail to protect their citizens or, in some cases, participate actively in violations. Regardless of the form, we are practically in the face of a failure of the authorities to protect their own citizens, not having the capacity to respond to their legitimate needs.

Some of those who have entered Europe have a well-founded fear of persecution, as defined by the 1951 Geneva Convention and its Protocol. Their life has been jeopardized on grounds of ethnicity, religion, nationality, political opinion or belonging to a particular social group, which distinguishes them from other migrants by conferring a special status of protection in accordance with the rules of international law and internally.

Subsidiary protection is granted to those who do not qualify as refugees, but face a real risk of „serious harm“ if they return to their country of origin. By legislation it has been established that they fall into the category of serious injuries death penalty or execution, torture or inhuman or degrading treatment or punishment, as well as serious and individual threats to the life or person of a civilian as a result of generalized violence in the event of internal or international armed conflict.

Protection is achieved through the cumulation of all the activities that arise from the existence of the social relationship between the state and the citizen, as well as the security that he feels on the territory of the state. In Kant's view, the state is „a multitude of people who live under law and associate through a contract¹⁰“. In the case of a violation of the social contract by the state, persecution occurs. We consider that refugee status is a serious testimony to the violation of the social contract between the authorities and the citizen.

⁹See Wessels, Janna. *Sexual Orientation in Refugee Status Determination*. Working Paper Series (74), Refugee Studies Centre. 2011. pag 15.

¹⁰ Kant, I., quoted in Bădescu, M., *Constitutional Law and Political Institutions*, Sitech Publishing House, Craiova, 2011, p. 73.

Through persecution or serious harm, the country of origin actually abandons its status as a protector, the individual not being part of society, denying his essential rights, being physically and mentally impaired.

The need for protection arises from strong abusive motives that occur in the state of origin, on the background of which the individual requires entry into another state in order to obtain protection and, implicitly, his safety. The lack of protection of the state of origin is a „shredding” of the existing link between a state and its own citizen, a situation that generates persecution or serious harm and implicitly, unfair treatment.

Under the terms of unlawful treatment, in violation of fundamental rights and freedoms, individuals are entitled to a form of protection granted by another jurisdiction.

In practice, the request for international protection implies the abandonment of the jurisdiction of a state and the passage under the jurisdiction of another state. Thus we are in the presence of a bilateral obligation: the state receives foreigners in order to ensure protection and appropriate treatment and, on the other hand, aliens are required to comply with the law of that State.

The right of a state to grant protection stems from the principle that each state is considered sovereign, „has exclusive control over the territory and hence the persons present in its territory”.

International co-operation and collective efforts are essential to launch an effective response to the current realities of trans-national movement.

International protection implies admittance to a safe country, the granting of a form of protection, respect for fundamental human rights. To this is added respect for the principle of non-refoulement.

The principle of non-refoulement¹¹ is enshrined in Article 33 of the 1951 Geneva Convention Relating to the Status of Refugees and proclaims that „No State shall in any way expel or return (refouler) a refugee to the frontiers of territories where life or his freedom would be threatened on grounds of race, religion, nationality, membership of a particular social group, or political opinion¹²”.

The need for an individual's security has always existed, and the provision of the vital framework for the existence of the person belongs to the state by creating favorable conditions for its development and by neutralizing the factors that would endanger this protection.

¹¹ See Art. 33 of the 1951 Convention Relating to the Status of Refugees; art. II of the OUA Convention; art. 3 of the United Nations Declaration on Territorial Asylum, adopted by the General Assembly in 1967 (Resolution 2312); art. 3 of the United Nations Convention against Torture and Other Inhuman and Degrading Treatment; art. 22 of the Convention on the Rights of the Child; art. 7 of the International Covenant on Civil and Political Rights.

¹² Geneva Convention on the Status of Refugees of 1951, Article 33.

The European Court of Human Rights stressed that „the assessment of whether there is a real risk must be made on the basis of all relevant factors that may increase the risk of ill-treatment ... it should be possible that a number of individual factors can not a real risk, when analyzed separately; but when considered cumulatively, in a situation of general violence and increased security, the same factors can give rise to a real risk¹³.

Both the need to take into account all relevant factors, cumulative, and the need to give weight to the general situation in the country of destination derive from the obligation to take into account all the relevant circumstances of the case”.

The principle of non-refoulement prohibits not only removal, expulsion or extradition to a country where a person may be at risk of persecution or other serious harm (direct return), but also prohibited in countries where individuals are at risk serious deportation to such a country (indirect non-refoulement)¹⁴.

State protection is the set of measures, actions, the capacity of institutions to ensure the security of the individual by establishing an efficient system. Diffuse protection is not sufficient.

In its depth, the right to protection is tied to human development and security. This depends on the relationships established between those in need of protection and the state that provides this protection. Issues related to these issues call into question human rights at the highest level¹⁵. The challenge is to build peace alliances that stretch horizontally and vertically between different levels of society.

In a natural state, states guarantee the fundamental rights and security of all members of society. But there are cases where the protective factors are disturbed, and the ability of the state to ensure that the individual's breeding appears to be non-existent. In these situations, people can no longer exploit their rights, and the fundamental principles of relations between the state and the people are violated. Thus, „the fundamental social relations that arise in the process of establishing, maintaining and exercising state power¹⁶” are affected.

International cooperation and collective efforts are essential to deliver an effective response to the current realities of trans-national movement.

There is an international and European consensus that asylum seekers belong to a particularly special category, a disadvantaged and vulnerable group, requiring special protection.

¹³ CASE OF NA. v. THE UNITED KINGDOM, STRASBOURG, 2008, [http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-87458\"\]}](http://hudoc.echr.coe.int/eng#{\).

¹⁴ European Union Agency for Fundamental Rights, Scope of the principle of non-refoulement in contemporary border management: evolving areas of law, Luxembourg: Publications Office of the European Union, 2016, p. 7.

¹⁵ See Irina Moroianu Zlatescu, MIGRATION AND LAW ISSUES RELATED TO LEGISLATION ON MIGRATION IN ROMANIA, HUMAN RIGHTS, XXIV. 1, 2014, p. 37.

¹⁶ See Ioan Muraru, Constitutional Law and Political Institutions, Ed. Actami, Bucharest, 1995, pp. 44-47.

The special status of an applicant as a member of a vulnerable group may have an impact on the obligations imposed on States as to the conditions under which such a person is received¹⁷.

National authorities are the first involved in the application of national rules¹⁸, the European Court of Human Rights examines whether the effects of interpretation and application are compatible with the provisions of the Convention.

It would be unfair if, despite the deficiencies, we did not mention the international action in the fight for the defense of human rights. Whatever state we are citizens of, we must have a common vocabulary, that of promoting the human dimension.

This crisis should not only be seen as a security threat but also as an opportunity to reaffirm the intensity and strength of the human dimension as well as to find lasting resolutions to balance the security and rights of the individual.

Migration is a phenomenon that can take place in dignity and not a survival project. The vulnerability resulting from the status of the immigrant who is sometimes excluded from the exercise of fundamental rights is in contrast to the necessary adaptation for the migration process itself.

¹⁷ Council of Europe/European Court of Human Rights, 2016, p. 4 http://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_ENG.PDF.

¹⁸ See Irina Moroianu Zlatescu, *Romanian Constitutional Law*, Ed.Kluwer Law International, Hague, London, Boston, 2017, p. 5.